

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

BECK SIMMONS LLC, individually)
And on behalf of all other similarly)
Situating,)

Plaintiff,)

vs.)

Case No. 4:14CV1161 HEA

FRANCOTYP-POSTALIA, INC.,)

Defendant.)

OPINION, MEMORANDUM AND ORDER

This matter is before the Court on Defendant's Motion to Stay, [Doc. No. 22]. Plaintiff opposes the Motion. After careful consideration, the Court will grant Defendant's motion.

Plaintiff filed a class action complaint alleging that Defendants violated the Telephone Consumer Protection Act, 47 U.S.C. § 227 ("TCPA") by faxing or having an agent fax advertisements without a proper opt-out notice as required by 47 C.F.R. § 64.1200. Defendants request the action be stayed pending resolution of over twenty petitions for declaratory ruling and/or waiver, filed with the Federal Communications Commission ("FCC"), seeking resolution of the threshold legal issue in this case, namely, the applicability of FCC regulation 47 C.F.R. §

64.1200(a)(3)(iv), which purports to govern solicited faxes and requires those faxes to contain an opt-out notice.

In support of its Motion, Defendants direct the Court's attention to the decision in *Nack v. Walburg*, 715 F.3d 680, 682 (8th Cir.2013), wherein the Eighth Circuit recognized that the Administrative Orders Review Act (“Hobbs Act”), 28 U.S.C. § 2342 et seq., precluded it from hearing challenges to the FCC regulation at issue and instructed that on remand, the district court “may entertain any requests to stay proceedings for pursuit of administrative determination of the issues raised.” On September 12, 2013, Judge Fleissig granted the motion to stay. In addition, Defendant points to the stay issued by Judge Ross in the case of *St. Louis Heart Center, Inc. v. Gilead Palo Alto, Inc.*, Case No. 4:13-cv-958, 2013 WL 5436651, at *1-2 (E.D. Mo. Sept. 27, 2013.)

In light of the Eighth Circuit's suggestion in *Nack*, and in the interests of reaching consistent results in similar TCPA cases, the Court will grant Defendant’s motion to stay this case. The Court is not persuaded that Plaintiffs will be unduly prejudiced by such a stay.

Accordingly,

IT IS HEREBY ORDERED that Defendant’s Motion to Stay [Doc. No. 22], is granted.

IT IS FURTHER ORDERED that this case is stayed until final rulings are issued by the FCC on the petitions for declaratory ruling and/or waiver, and on any appeals filed in connection with the ruling.

IT IS FURTHER ORDERED that every ninety (90) days, beginning **May 17, 2015**, Defendant shall advise the Court of the status of the proceedings before the FCC and any appeal filed in connection thereto.

IT IS FURTHER ORDERED that the Clerk of Court shall administratively close this matter.

Dated this 17th day of February, 2015.

A handwritten signature in black ink, reading "Henry Edward Autrey", with a long horizontal flourish extending to the right.

HENRY EDWARD AUTREY
UNITED STATES DISTRICT JUDGE